

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL R. ELLISON,

Defendant.

DECISION AND ORDER

21-MJ-4107MWP
21-MR-6181DGL

Defendant Michael R. Ellison (“Ellison”) was charged by Complaint with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The Complaint stemmed from defendant’s arrest on April 10, 2021, for firing six shots in the City of Rochester near 111 Grand Avenue. Ellison was presented on the charge in federal court and the Government promptly moved for detention under 18 U.S.C. § 3142(e) on the grounds of risk of flight and danger to the community.

United States Magistrate Judge Marian W. Payson conducted a detention hearing on July 30, 2021 and accepted proffers from both the Government and defense counsel. On August 23, 2021, Magistrate Judge Payson announced her decision from the bench granting the Government’s motion for detention based on danger to the community. Magistrate Judge Payson declined to order detention based on risk of flight, but determined that the Government met its burden of establishing by clear and convincing evidence Ellison’s danger to the community. Magistrate Judge Payson entered a written Order of Detention (Dkt. #10, 21-MJ-4107) on August 23, 2021.

Defense counsel duly appealed that detention order to this Court pursuant to 18 U.S.C. § 3145(b) and the Government responded (Dkt. #3, 21-MR-6181).

On October 21, 2021, this Court heard argument on the appeal in a remote format and accepted additional proffers by counsel. The Court reserved decision.

On this appeal, the Court considers the detention motion *de novo*. The Court has reviewed the minutes of the July 30, 2021 detention hearing and Magistrate Judge Payson's oral decision rendered in open court on August 23, 2021. The Court has also reviewed the Magistrate Judge's Order of Detention and the thorough 11-page Pretrial Services Report which was referenced by Magistrate Judge Payson and the parties.

Based on the above, I conclude that the Government has sustained its burden of establishing by clear and convincing evidence that there are no conditions or combination of conditions that will reasonably assure the safety of another person or the community. The appeal from Magistrate Judge Payson's Order of Detention is DENIED and defendant is hereby ordered DETAINED pending trial pursuant to 18 U.S.C. § 3142(e).

I have considered the factors listed under 18 U.S.C. § 3142(g) in determining whether detention is appropriate. The offense charged here is serious and the weight of evidence is quite strong. According to the Complaint and the Government's proffer, Ellison was arrested very soon after firing six gunshots around 10:20 p.m. on April 10, 2021. Two officers patrolling the neighborhood near 111 Grand Avenue, Rochester, New York heard gunshots and observed a dark-colored Honda flee the area at a high rate of speed. The officers followed the vehicle and observed it run a stop sign. Although the officers engaged their emergency lights and siren, the vehicle failed to stop. Eventually, the Honda stopped and the driver exited the vehicle ignoring the officers' commands to stop.

Eventually Ellison was detained. The officers discovered keys to the abandoned Honda vehicle near where Ellison had fled. In the vehicle they observed a bottle of alcohol and a 45 caliber semi-automatic pistol which had been reported stolen from the State of Georgia. Ellison appeared to be highly intoxicated and was eventually taken to a hospital rather than the Rochester Public Safety Building.

Firearms and firearm violence is a significant problem in the City of Rochester and other municipalities. The danger presented by a highly-intoxicated person firing a weapon in a densely populated area is obvious.

Magistrate Judge Payson was concerned with Ellison's prior alcohol-related issues and a prior conviction under 18 U.S.C. § 922 in this federal court. I agree with that concern.

The Pretrial Services Report reflects that Ellison has four prior felony convictions, including robbery, grand larceny and felony driving while intoxicated, in addition to the federal court charge, a possession of ammunition by a felon (08-CR-6119). On that charge, Ellison was sentenced principally to 51 months imprisonment. The facts of that incident are troubling indeed. According to the Pretrial Services Report, defendant admitted firing several shots into his girlfriend's home on Grand Avenue in Rochester.

The Pretrial Services Report listed 16 separate reasons why the Probation Office recommended detention because Ellison posed a risk of danger. All those items considered together provide ample support for the Government's detention motion.

This is the second time defendant has been involved with a firearms offense after having been convicted of a felony. In both instances, defendant is charged with discharging a firearm. Alcohol was involved in both instances.

In addition to the felonies, Ellison has numerous misdemeanor convictions. Some of them violent, including an assault conviction and a resisting arrest conviction. As the Magistrate Judge noted, Ellison's record also demonstrates his failure to comply with court orders. His record includes several violations of probation, three violations of federal supervised release, parole revocations, and bench warrants. On the prior federal charge, there were three separate violations of supervised release once Ellison finished his 51-month sentence.

It also appears evident that the defendant has had, and I believe continues to have, serious alcohol abuse issues. The violation of supervised release, mentioned above, related in part to both drug and alcohol abuse. Ellison also has several driving while intoxicated convictions.

Based on the above, although I do analyze this application *de novo*, I concur with the decision of United States Magistrate Judge Payson that there are no conditions or combination of conditions that would reasonably guarantee the safety of another person or the public, and that the Government has sustained its burden of proving by clear and convincing evidence that detention is warranted.

CONCLUSION

The appeal from United States Magistrate Judge Marian W. Payson's Order of Detention is DENIED.

I find that the Government has met its burden of proving by clear and convincing evidence that defendant should be detained based on danger to the community. I agree and concur with the reasons advanced by Magistrate Judge Payson in her August 23, 2021 oral decision. In addition, I have set forth above reasons for this Court's decision. I also rely on the Pretrial Services Report

which sets forth in detail the numerous reasons why the Probation Office recommends that the defendant be detained.

The defendant Michael R. Ellison is, therefore, hereby ordered DETAINED pending trial, pursuant to 18 U.S.C. § 3142(e).

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 29, 2021.